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NO. 335

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR,
Petitioner,

vs.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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September 15, 1932.

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THE LEGAL ISSUES HAVE ALREADY BEEN DETERMINED IN PRINCIPLE BY THIS COURT.

The Act of March 2, 1919, gives respondent the right to receive an award for its "net losses." "Net losses" means any net losses. Whether a particular item is a loss is a question of law for the Court. The amount of the loss is an issue of fact for the Secretary fairly and equitably to decide. This Court applied the principle that all net losses are comprehended by the statute unless "limited" or "excepted" by definite provision thereof. See the above quoted words used in Wilbur v. United States, 284 U. S. 231.

A complete statement of the matters involved in this case will disclose that the questions of law sought to be raised are too insubstantial and too definitely settled to justify the granting of the writ. The three specifications stated by petitioner will be considered separately.

PURCHASE OF PROPERTY.

Prior to stimulation the Pratts, individually, had contracted to purchase certain mining machinery, etc. After stimulation the Chestatee Corporation was organized for the sole purpose of carrying out the requests of the Secretary of the Interior to produce pyrites.

The Secretary, as shown in Exhibit D to his answer herein (R. 16), found:

> "In this particular case, as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do, unless the Government should underwrite the venture. This, of course, was impossible, and, after some delay, the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant *to enlarge* his operations * * * ."

In the same exhibit (R. 19, approved R. 22) the Secretary found:

> "Equipment and machinery purchased before stimulation but used during stimulation will be given a liberal rental or depreciation credit only. The reason why its *Purchase price* will not be allowed is because the Government was in no wise responsible for its *purchase*, and the claimant at the moment he purchased the property had incurred any loss that might come, and that loss was therefore his own. To allow for its *purchase* would be in fact to allow for *the purchase of property*." (R. 19).

In petitioner's answer (R. 25) he says:

> "Thereafter, and subsequent to stimulation, the Pratts turned over all of this aforesaid property to the Chestatee Corporation *in return, as respondent understands and believes, for the stock in that corporation* which they had issued to themselves, and *in part consideration* of a so-called agreement which they, themselves, made on behalf of the corporation, as its incorporators and sole stockholders, whereby *the corporation assumed such portion of the indebtedness*, which they, themselves, had incurred prior to stimulation through the purchase of the said machinery, equipment, tools, and miscellaneous items as then remained unpaid." (Emphasis supplied.)

No question is raised but that the money lost by the corporation in taking over by purchase, after stimulation, and assuming as part consideration thereof the obligations due on

this machinery and other property is a loss which within the Vindicator case, 284 U. S. 231 above, should be compensated unless the sole fact that it made the purchase thereof from those who became its stockholders requires a different ruling. This naked fact of stock ownership is asserted as a sufficient ground for disregarding the corporate entity. With deference to the Solicitor General, such a claim is frivolous, in view of the settled state of the law on this subject.

Klein v. Board of Tax Supervisors, 282 U. S. 19.

Donnell v. Herring-Hall-Marvin Safe Co., 208 U. S. 269.

Generally on the subject see Fletcher Cyc. Corp., Vol. 1, p. 84, et seq. under heading "Corporation as Distinct from Members."

SALARIES OF EXECUTIVE OFFICERS.

The same refusal of the Secretary of the Interior to recognize the corporation as distinct from its stockholders caused him to refuse to allow as a part of the corporate expenses incurred in carrying out the Government's request to produce pyrites the salaries paid to executive officers who were also stockholders. Had the executive officers not been stockholders reasonable salaries would have been allowed the corporation as a loss. The fact that they were the controlling stockholders caused the Secretary to refuse to allow any salaries whatever to them and allowed only their bare subsistence expense.

It will, of course, be readily conceded that salaries paid to those who controlled the corporation would have justified an inquiry as to the reasonableness thereof. The record is entirely silent of any suggestion that the aggregate amount of these salaries has ever been questioned from the standpoint of reasonableness.

The second specification in the petition for the writ of certiorari, on page six, if intended to suggest that the Secretary questioned the reasonableness of these salaries is without justification in the record. The Secretary merely held that he could allow no salaries at all to the officers who controlled the stock, (R. 20) saying:

> "A straight salary allowance to a partner or part owner of a property would mean the granting of a profit to him."

That the stockholders will not benefit further than in getting a release from their indorsement appears in the findings set up by petitioner who at R. 21 said:

> "Always, too, there was a realization that claimant in responding to Governmental request will suffer great financial loss, notwithstanding the generous provisions of the War Minerals Relief Act."

Again, the problem is simply whether the corporation shall be treated as a separate entity, and the suggestion that it should not be so treated is frivolous under the facts of this case and the authorities cited.

ATTORNEYS FEES.

The corporation had no function in life except to produce pyrites. Every expense it incurred was for this purpose and this alone. Exhibit "D" to the Secretary's answer, controling in this respect, shows the complete review of the situation by the Department of the Interior and demonstrates the correctness of this statement. Like any other corporation, this one incurred legal expenses, the amount here being moderate. They were expenses incurred in producing pyrites since every expense of the corporation looked to this end alone. The suggestion that the expense for attorney's fees was not an expense incurred in producing or preparing to produce pyrites can only mean that since the attorneys were not actually digging the material out of the ground the necessary expense incurred to them under the circumstances stated is not allowable. We again submit with deference that the contention is frivolous.

PRATTS NOT EQUITABLE OWNERS OF THE CLAIM.

On page nine of the petition the corporation is spoken of as "the alter ego of the Pratts" in a way to suggest that it is a mere medium to collect a claim for the benefit of the Pratts. Were this true as to the actual relationship it would not justify disregarding the corporate entity. The contrary is shown by the record.

The Interior Department has found that the corporation was without funds and its operations, in response to Government stimulation, were on borrowed capital. (R. 13).

The Department has also found that this capital was borrowed from Ashcraft-Wilkinson and that Secretary Lane himself induced them to make the loan. (R. 16).

The Department has likewise found that this borrowed capital was lost, and that notwithstanding awards heretofore made the claimant will still be left bearing a tremendous loss as a result of its response to Government stimulation. (R. 21. See also quotations above 2, 3, 4.)

All of these findings are made by the Department itself, and can not be questioned.

Hence, the ultimate beneficiary of this claim is the creditor whose money was loaned in response to Government stimulation.

In the rare cases where the corporate entity will be disregarded and the stockholders considered as the real parties at interest the court does so to ascertain the truth to prevent fraud and to disregard a fiction.

It is respectfully submitted that the petition should be denied.

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